

CITY OF MESA

MINUTES OF THE PLANNING AND ZONING BOARD MEETING

Held in the City of Mesa Council Chambers
Date: November 17, 2010 Time: 4:00 p.m.

MEMBERS PRESENT

Randy Carter, Chair
Beth Coons, Vice-Chair
Chell Roberts
Vince DiBella
Lisa Hudson
Brad Arnett
Suzanne Johnson

MEMBERS ABSENT

OTHERS PRESENT

Gordon Sheffield
Tom Ellsworth
Lesley Davis
Angelica Guevara
Wahid Alam
Debbie Archuleta

Chairperson Carter declared a quorum present and the meeting was called to order at 4:00 p.m. The meeting was recorded on tape and dated November 17, 2010. Before adjournment at 5:03 p.m., action was taken on the following:

It was moved by Boardmember Vince DiBella, seconded by Boardmember Beth Coons that the minutes of the October 19, 2010, and October 20, 2010 study sessions and regular meeting be approved as submitted. Vote: 6 – 1 (Boardmember Hudson abstained)

Consent Agenda Items: All items identified with an asterisk (*) were approved with one Board motion.

It was moved by Boardmember Beth Coons, seconded by Boardmember Lisa Hudson that the consent items be approved. Vote: 7 - 0

Code Amendment: Amending Sections

Zoning Cases: Z10-31, Z10-32, Z10-33, Z10-34

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Item: **Z10-31 (District 6)** 1958 South Greenfield Road. Located north of Baseline Road and west of Greenfield Road (10,000± sq. ft.). Council Use Permit. This request will allow a commercial recreation / entertainment land use within a C-2 zoning district. WWW AHF Partners, LLC., owner; Lori Rutten, Dos Gringos, applicant. (PLN2010-00310)

Comments: This case was on the consent agenda and therefore was not discussed individually

It was moved by Boardmember Beth Coons, seconded by Boardmember Lisa Hudson

That: The Board recommend to the City Council approval of zoning case Z10-31 conditioned upon:

1. Compliance with the basic development as described in the project narrative and plan of operation submitted.
2. Compliance with all City development codes and regulations.
3. Compliance with all requirements of the Development Services Department (Engineering, Traffic Engineering, Solid Waste and Facilities, etc.).
4. The approval of this Council Use Permit is limited to the project narrative and plan of operation provided.

Vote: Passed 7 – 0

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Note: *Audiotapes of the Planning & Zoning Board Meetings are available in the Planning Division Office for review. They are also “live broadcasted” through the City of Mesa’s website at www.mesaaz.gov*

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Item: **Z10-32 (District 1)** 740 East Main Street. Located east of Mesa Drive on the north side of Main Street (6,200± sq. ft.) Council Use Permit. This request will allow the expansion of an existing pawn shop. Red Mountain Asset Fund I, LLC, owner; Susan Demmitt, Beus Gilbert, PLLC, applicant. (PLN2010-00331)

Comments: This case was on the consent agenda and therefore was not discussed individually

It was moved by Boardmember Beth Coons, seconded by Boardmember Lisa Hudson

That: The Board recommend to the City Council approval of zoning case Z10-32 conditioned upon:

1. Compliance with the basic development as described in the operations plan and project narrative and as shown on the site plan.
2. Compliance with all City development codes and regulations.
3. In the event the pawn operations are transferred to a business, person, or entity other than Cash America, the Council Use Permit to conduct pawn operations at this site will terminate.
4. Adult materials shall not be pawned, bought or sold at this location.
5. Firearms will continue to be permitted to be pawned as collateral for short term loans at this location and shall not be displayed or sold as stated in the operational plan of the project narrative.
6. A five-foot (5') landscape strip shall be installed adjacent to the sidewalk along Main Street as shown on the site plan.
7. The existing curb-cut on Horne shall be removed.
8. The building, trim, and bollards shall be repainted to a more neutral color as approved by the Planning Director through an administrative review.
9. All non-conforming signs shall be removed or replaced with each phase of expansion of the pawn operation.

Vote: Passed 7 – 0

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Item: **Z10-33 (District 5)** 1709 North Greenfield Road. Located south of McKellips Road on the east side of Greenfield Road (3.32± acres). Council Use Permit. This request will allow the expansion of an existing Charter School in an M-1 zoning district. Anjum Majeed, owner/applicant. (PLN2010-00316)

Comments: This case was on the consent agenda and therefore was not discussed individually

It was moved by Boardmember Beth Coons, seconded by Boardmember Lisa Hudson

That: The Board recommend to the City Council approval of zoning case Z10-33 conditioned upon:

1. Compliance with the development as described in the project narrative (except as modified below) and as shown on the site plan, preliminary elevations, and landscape plan provided.
2. Compliance with all City development codes and regulations.

Vote: Passed 7 – 0

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Item: **Z10-34 (District 1)** 1903 North Country Club Drive. Located south of McKellips Road on the east side of Country Club Drive (7.47± acres). Rezone from C-2 to R-4 BIZ and Site Plan Review. This request will bring the zoning of the site into conformance with the existing land use. Ryan Lynch, owner/applicant. (PLN2010-317).

Comments: This case was on the consent agenda and therefore was not discussed individually

It was moved by Boardmember Beth Coons, seconded by Boardmember Lisa Hudson

That: The Board recommend to the City Council approval of zoning case Z10-34 conditioned upon:

1. Compliance with the development as described in the project narrative (except as modified below) and as shown on the site plan, preliminary elevations, and landscape plan provided.
2. Compliance with all City development codes and regulations.

Vote: Passed 7 – 0

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D. DISCUSS AND MAKE RECOMMENDATION TO CITY COUNCIL ON THE FOLLOWING TEXT AMENDMENT:

1. Medical Marijuana Distribution Centers

Staffmember Gordon Sheffield briefly explained Proposition 203. He stated the medical marijuana must be sold and cultivated by a non-profit organization. The patient must be certified by a doctor and the patient and caregiver must both be registered through DHS. The reason for the caregiver being registered is that if the patient is too ill to go to the dispensary, the caregiver could purchase the marijuana for the patient. The patient can obtain up to 2.5 ounces every two weeks at a state regulated dispensary. The registry cards expire one year after date of issuance. Must be 18 years of age or older. Mr. Sheffield explained the Department of Health Services will be the regulatory agency. There will be approximately 120 dispensaries throughout the State, and DHS intends to distribute them evenly. If a person with a card resides more than 25 miles from a dispensary, they would be allowed to grow their own marijuana. The effective date of the DHS regulations was proposed to be March 2011, which means this Text Amendment needs to be voted on in January.

Mr. Sheffield explained that the Arizona League of Cities and Towns recommends the dispensaries be located in C-2 and C-3 districts. City of Mesa staff proposed the dispensaries be located in C-2 and C-3 districts, which are busy active locations, and not be allowed in residential, O-S, PEP, M-1 or M-2. Staff was also proposing a 2400' separation from other dispensaries, and that the distance from schools, churches, parks and HOA maintained open space and libraries be 1200', and be 500' from day care/preschools. Staff's recommendation for off-site cultivation facilities is that they be allowed in C-3, M-1 and M-2 with similar distance separations; with a 3,000 sq. ft. maximum size, and a maximum storage area of 1,000 sq. ft. For off-site infusion facilities, C-3, M-1 and M-2, similar distance separations, maximum size of 10,000 sq. ft.; maximum storage of 2,500 sq. ft.

Boardmember Suzanne Johnson was concerned that there was no separation proposed from Group Homes for the Handicapped.

Boardmember Beth Coons suggested increasing the distance between dispensaries.

Mr. Sheffield stated additional regulations for dispensaries would be to require them to register with Mesa's Planning Division; maintain Active DHS registration/cards and comply with DHS rules and ARS statutes. They would not be allowed to have drive through window service; open air seating; or delivery service. He then showed the Board several maps that showed different buffering distances and how the changes in separation would affect the allowed locations of dispensaries.

Boardmember Coons confirmed that DHS would regulate the transportation from the off-site cultivation sites and the infusion facilities to the dispensaries.

Al Moore, the Director of Security for Mesa Public Schools spoke regarding the policy for lock downs at schools. Mr. Moore explained that the protocol for lock downs are very broad so each instance can be taken on a case by case basis. He stated most lock downs are at the direction or recommendation of Mesa Police. He stated there are a variety of reasons why a school might be locked down, most of the time it is because of a Police incident in the neighborhood.

Boardmember Coons was concerned with children walking to and from schools and questioned what the distance was children would walk to a school before they are picked up by a school bus.

Doug Wancura of the Arizona Medical Marijuana Association, 4455 East Broadway Suite 101, then spoke in support of the staff recommendation. He stated he thought the recommended regulations

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were very reasonable, with the exception of the prohibition of deliveries. He stated they thought DHS should be the one to establish a policy regarding deliveries, so that you would not have some cities that allow them and other cities that do not.

In response to Mr. Wancura's statement, Mr. Sheffield stated that staff had reviewed a draft Ordinance from Tucson and Pima County. Staff thought that if the patient could not pick up the medical marijuana it should be the care giver who picks it up. He stated that if the Board chose to have DHS make the decision, staff could drop "no deliveries" from the recommendation. Chair Carter agreed deliveries should be restricted. Boardmember Johnson agreed with restricting deliveries and suggested the dispensaries should be one mile apart. Boardmember Coons agreed with her comments. Boardmember Roberts asked for the reasoning behind restricting deliveries. Mr. Sheffield explained the idea was the caregiver would be the person picking up the medical marijuana, rather than having it delivered. Chair Carter was concerned with the monitoring of the delivery and the monitoring of how much each patient was receiving and how frequently. He was also concerned that patients might have the medicine delivered by more than one dispensary. Mr. Wancura stated that the photo ID would be verified at the time of delivery. Chair Carter was concerned that there be a State wide data base that all of the cards tie into. Boardmember Roberts confirmed that not all patients would have care givers. Chair Carter confirmed that the reason pharmacy's cannot sell medical marijuana is that the proposition specifically required that the medical marijuana be sold by non-profit dispensaries. Boardmember Johnson was concerned with the safety of the delivery vehicles, and was concerned with what might happen if they were involved in an accident, or targeted for theft. Boardmember Coons thought the City should err on the side of caution in the beginning and if DHS develops regulations for delivery, the City could always revise their regulations. Chair Carter suggested maybe the regulations could have a two year time limit and then the regulations would be reviewed against the DHS regulations to see if the City regulations should be revised. Mr. Sheffield stated that some municipalities were proposing to do that. Phoenix for example is proposing the dispensaries renew their registration after a period of time. Chair Carter thought that was a good idea. Boardmember Arnett supported the staff recommendations in absence of DHS guidelines. Boardmember DiBella questioned what would happen if DHS developed regulations that were less restrictive than Mesa's or any other cities. Mr. Sheffield stated that typically, the more restrictive guidelines would be followed, whether required by the municipalities or DHS. Boardmember DiBella was in favor of not allowing deliveries.

Boardmember Coons confirmed that the proposal to renew the registration of the dispensaries, the cultivation facilities and the infusion facilities on an annual basis was not in the regulations proposed by staff, so the Board would need to add that.

Boardmember Arnett thanked staff for making the revisions the Board requested at the November 16, 2010 study session.

It was moved by Boardmember Coons and seconded by Boardmember Suzanne Johnson

That the Board recommend approval of the staff recommendation concerning the medical marijuana Text Amendment with the following revisions:

1. A 1200' buffer around schools
2. A one mile separation between dispensaries
3. A one year renewal of the City registrations requirement for dispensaries, cultivation facilities, and infusion facilities.

Vote: 7 – 0

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E. DISCUSS AND TAKE ACTION ON THE FOLLOWING PRELIMINARY PLAT(S):

- *1. Southern Avenue Marketplace. (District 6)** The 7400 to 7500 blocks of East Southern Avenue (north side). Located west of Sossaman Road on the north side of southern Avenue. (11.57± acres) This request will allow for extension of a preliminary plat. Kevin page, Vice President, The Arizona Real Estate Fund II, LLC., owner; David Calcaterra, Deutsch Architecture Group, applicant.

It was moved by Boardmember Beth Coons, seconded by Boardmember Lisa Hudson

That: The Board approve the preliminary plat of Southern Avenue Marketplace conditioned upon:

1. Compliance with the development as described in the project narrative (except as modified below) and as shown on the site plan, preliminary elevations, and landscape plan provided.
2. Compliance with all City development codes and regulations.

Vote: Passed 7 – 0

F. HEAR A PRESENTATION, DISCUSS AND PROVIDE DIRECTION ON THE FOLLOWING:

Zoning Code Update Transition Policy

Staffmember Gordon Sheffield explained the proposed transition policy for the new Zoning Code.

The proposal rules for transition from the old Zoning Code to the new Zoning Code had 7 major areas which include: Violations, Projects with approvals or permits; Planning applications filed prior to the effective date of the new Zoning Code; Partially constructed projects; Development of projects with an existing PC district, or with PAD, DMP or BIZ overlay Zoning Districts; Planning applications filed after the effective date of the new Zoning Code; Properties for which the owner believes the adoption of the new Zoning Ordinance has a direct affect upon and has caused a diminution in value of the property. He stated for the most part there were one year to three year time limits, most are three year time limits. He stated the one comment he had received was from the Home Builders Association, they are requesting a delayed effective date, rather than the typical 30 days. Mr. Sheffield stated staff was proposing 60 days, the Home Builders were requesting 6 months.

Boardmember Suzanne Johnson asked under Preliminary Plats, it says “unless approval of the preliminary plat is extended, based on the requirements of the Subdivision Regulations”, she asked how many extensions would be allowed based on the Subdivision Regulations. Staffmember Lesley Davis stated they would be allowed extensions up to three years, in one year increments.

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Boardmember Coons was concerned for projects that have been in planning stages for some time, but don't have all of their approvals, with the current economy. Mr. Sheffield explained that the new Zoning Code will actually be reducing many setbacks and allowing buildings to be constructed closer to the property lines. He also stated the new Code will allow for more flexibility in design.

Chair Carter stated the what staff has done over the previous three years has been more than adequate, because there is probably another year before the economy will improve. So most of the projects that were approved two or three years prior would be obsolete. This will allow them plenty of time to utilize the new Code and bring more value to their properties.

Boardmember DiBella stated that many municipalities have a time limit on their zoning approvals. This requires the applicant to update their approvals, which would include being in conformance with any Code updates. He wondered if the City was considering anything like that. Mr. Sheffield stated that projects that are in transition would have to do that.

Respectfully submitted,

John Wesley, Secretary
Planning Director

DA:
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